IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.9991/05
Kailash Chand Pareek Vs. Gopal Lal & Anr.

4.10.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Sanjay Pareek for petitioner.
Shri K.C. Sharma for respondent.

Heard learned counsel for the parties.

The petitioner has challenged the order dated 20.10.2005 passed by the learned trial court whereby his right to file written statement was forfeited and the written statement which in fact was already filed by the defendant-petitioner was ordered not to be taken on record and the matter was posted for recording evidence of the plaintiff ex-parte.

Learned counsel for the

petitioner argued that the notice was not served personally on the defendant-petitioner and its service was taken as complete on the basis of the report submitted by the Process Server that it was pasted outside his residence. It was argued that the provisions of Order 5 Rule 17 CPC were not followed. The advocate of the defendant appeared in Court on 25.7.2005 and thereafter the matter was posted for 23.8.2005 and 15.10.2005. The advocate of the defendant though under an erroneous but a bonafide belief did not file the written statement because on these dates the Presiding Officer was not posted. Learned counsel referred to the judgment of Hon'ble Supreme Court in Salem Advocate Bar Association vs. Union of India-AIR (2005)

SC 3353 and argued that in genuine cases, the Court can extend the time to file the written statement.

Learned counsel for the respondent opposed the writ petition and argued that service has been duly effected on the petitioner and in fact this was proved by the fact that on 25.7.2005, the advocate of the petitioner was present. It was argued that the matter was at the stage of pronouncement of judgment and at this stage permitting written statement of the defendant petitioner would delay the early disposal of the case.

In the facts of the case I find that though on facts it is evident that service was effected on 23.6.2005 and the written statement was filed on

15.10.2005. Though the time period of 90 days is prescribed for filing of the written statement in terms of Order 8 Rule 1 CPC, but in view of judgment of Hon'ble Supreme Court in R.N. Jadi & Brothers & Ors. Vs. Subhash Chandra- (2007) 6 SCC 420, the provisions of Order 8 Rule 1 do not take away the power of the court to take written statement on record even thereafter. Their Lordships in that case held that the provisions of Order 8 Rule 1 only casts an obligation on defendant to file written statement within the time provided, but that rule is directory in nature and courts have to see that no injustice is caused to any party.

In the circumstances, the writ petition is allowed. The order of the

trial court dated 20.10.2005 is set aside and the written statement is directed to be taken on record subject to the condition that defendant-petitioner shall produce all his witnesses and record his evidence within a period of two months from the date next fixed before the trial court and make payment of a sum of Rs.1,000/- as cost to the plaintiff respondent before that Court on the next date of hearing.

(Mohammad Rafiq),J.

Rs/-